

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

WP(C).No. 28423 of 2007(H)

PETITIONERS:

- 1. A.R.RAMA KAMATH, S/O.A.R.RAGHU KAMATH,
ALUNGAPARAMBIL, THODUPUZHA P.O.,
THODUPUZHA VILLAGE.**
- 2. ISSAC T.DEVASSIA,
THERAKAPLACKAL, KANJAR KARA,
KOOVAPPALLY P.O., KUDAYATHOOR VILLAGE,
THODUPUZHA.**

BY ADV. SRI.V.C.JAMES

RESPONDENT:

**PERINGOTTUKARA FINANCE AND INVESTMENT
CO.LTD., (NAME CHANGED TO PERINGOTTUKARA CHITS
LTD.), THODUPUZHA BRANCH, MUVATTUPUZHA BYE-PASS
ROAD, THODUPUZHA.**

BY

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 25/09/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

M.N. KRISHNAN, J.

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W.P.C. NO. 28423 OF 2007

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Dated this the 25th day of September, 2007.

J U D G M E N T

This writ petition is preferred against the order of the Munsiff, Thodupuzha in E.P.17/06 in O.S.74/05. The decree holder is a financial investment company. An exparte decree has been obtained against the defendants for realisation of Rs.1,04,062/-. The Court below on appreciation of the evidence of PWs.1 and 2 and Exts.A1 to A2 came to the conclusion that judgment debtors 1 and 3 are having sufficient means to pay and therefore ordered arrest of those judgment debtors. The Court below relied on a statement given by them at the time of advancement of loan whereby they contended that they are having income besides landed property.

2. The learned counsel for the writ petitioners contends before me that for the very same transaction a criminal complaint has been filed under Section 138 of the N.I. Act which ended in conviction and modification by the

appellate Court and now pending before this Court in revision and towards the amount some security is furnished in the Chief Judicial Magistrate's Court by depositing certain amount. The learned counsel for the writ petitioners also submits that a person cannot be allowed to realise the very same amount twice, one by a proceeding under the N.I. Act and other by a civil decree. There is considerable force in that contention. But at the same time, since the criminal revision petition is pending before this Court, certainly the writ petitioners would be in a position to draw the attention of this Court if they pay the civil decree amount so that the Court may take into consideration that aspect while awarding compensation. Under Section 357(3) Cr.P.C. So far as the proof regarding the means is concerned I am in agreement with the executing Court that judgment debtors 1 and 3 are having sufficient means to pay the amount. The learned counsel further submits that if a breathing time is given his client will be in a position to pay the amount. Therefore, I dispose of the writ petition as follows.

(1) I direct the writ petitioners herein to pay the entire decree amount in three monthly equal instalments.

(2) First instalment shall commence from 26.11.07.

(3) If there is default of two consecutive instalments or payment of the first instalment, then the decree holder will be at liberty to request the Court for issuing the warrant of arrest.

(4) On satisfaction of the decree debt, the writ petitioners are permitted to place materials before this Court where the Criminal Revision is pending against the conviction and sentence under Section 138 of the N.I. Act.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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